

BOARD OF PESTICIDES CONTROL

April 15, 2005

Colby/Thomas Rooms, Hampton Inn
425 Kennedy Memorial Drive, Waterville

AGENDA/MINUTES

9:30 A.M.

Chair Carol Eckert called the meeting to order at 9:34 A.M. Other members in attendance included Berry, Bradstreet, Humphreys, Jemison and Simonds. Walton was unable to attend. Assistant Attorney General Mark Randlett was also present.

1. Introduction of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the March 18, 2005 Board Meeting

Action Needed: Amend/ and or Approve

- ☒ Bradstreet/Berry: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

3. Review of Rule-making Record for Proposed Amendments to Chapters 27, 31 and 60

Public hearings were held on March 18 when one person spoke regarding the proposed amendments to Chapter 27, four people spoke regarding changes to Chapter 31, six people opposed any change for Chapter 60 and one person expressed support for the proposed amendment. The comment period closed on April 4th with one written comment regarding Chapter 27, three comments regarding Chapter 31 and fifty-three comments regarding Chapter 60. Of the latter group, thirty-one people supported the proposed amendments while twenty-two were opposed to any change in the rule. The staff has not had time to prepare a summary of comments but will try to have a summary of the major points by the time of the meeting.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and determination if the members wish to move ahead with one or more of the proposed changes to the three chapters.

- ☒ Batteese called the member's attention to the Summary of Comments and proposed new language for Chapters 27 and 31 that were included in the packets distributed at this meeting. He explained that the staff had not had time to summarize the Chapter 60 comments. There was agreement to consider the chapters in order and Jennings pointed out questions had been raised by school employees about defining when classes are not

regularly scheduled under Chapter 27. The staff recommended a requirement that signs be posted on treated areas rather than sending letters home to all parents when most children were not participating in special activities at the school. He then asked if the members agreed conceptually and there was consensus the staff should move forward with the proposed language. The members were also in agreement with the provisions to clarify that certified pool operators may disinfect pools and spas in school and have to meet all the other requirements in Chapter 27.

Batteese offered new language for Chapter 31 as suggested by the two Bureau of Health employees to make sure any certified pool or spa operator understood that he or she must also comply with their Chapter 202 rules relating to public swimming pools and spas. In addition, the staff provided new language to meet the suggestion that commercial applicators should be able to qualify for recertification by submitting documentation from a substantially equivalent professional certification program.

Eckert noted there had been strong opposition to the proposed amendment to chapter 60 and asked for the members to offer their opinions. Simonds observed there did not appear to be any middle ground and both Humphreys and Jemison remarked that several had indicated the rule was a last resort for some people. Bradstreet agreed the testimony was compelling and questioned if there could be better enforcement of existing rules. Berry stated he had a lot of sympathy for sensitive individuals but would like to see more efforts towards mediation. There was additional discussion about verifying medical records and validating exposure. Eckert and Hicks agreed these latter points should be considered by the Medical Advisory Committee while other staff worked with Randlett to develop waiver language for an applicant to sign granting permission for their medical records to be discussed in public meetings.

Bradstreet/Jemison: Motion made and seconded for staff to prepare the Chapter 27 and 31 amendments for adoption.

In Favor: Unanimous

Bradstreet/Humphreys: Motion made and seconded to abandon the proposed amendment to Chapter 60.

In Favor: Unanimous

4. Review of Cooperative Extension's Latest Water Quality Monitoring Results

Since 1989, the Cooperative Extension Blueberry Specialist has been conducting annual sampling of several wells in and around blueberry fields to monitor for the presence of the highly soluble herbicide hexazinone. In recent years, he has also looked for three additional blueberry pesticides in both ground and surface water. At this meeting, he will share the results of his 2004 sampling program and explain that he will not be continuing the sampling program in 2005 because the long term data have shown consistent reduction in detections.

Presentation By: David Yarborough
Extension Blueberry Specialist

Action Needed: Discussion and determination if any action is appropriate at this time.

- ☒ Yarborough reviewed his results pointing out there had been no major changes in the hexazinone levels with most under 4 ppb. He also explained that he would continue to monitor these wells but due to shrinking financial resources he would be looking at a longer frequency of sampling such as every two to three years. Humphreys expressed pleasure that he would not be permanently discontinuing the sampling and Simonds asked if hexazinone use was declining. Yarborough responded that it was because growers were getting by with lower rates. In response to a question about alternatives, he announced he would be testing two relatively new herbicides that are already registered for several crops and are not very soluble. The down side is that both products need lots of rainfall to activate them. Eckert asked if the members wished to take any action on this subject and there was consensus none was needed.

5. Review of Staff's Report on 2004 Drift Study of Two Aerially Applied Blueberry Pesticides

Since 1999, the staff has collected water samples and spray drift cards to determine if aerial pesticide applications to blueberry fields are resulting in drift in the vicinity of the Narraguagus and Pleasant Rivers that support Atlantic salmon populations in Washington County. The staff will point out they addressed some of their past logistical problems by enlisting a student, a professor, volunteers from two watershed councils and experimental passive samplers to collect the samples. Low levels of pesticide residues were detected on the drift card or water sample or both at five out of nine sampling sites.

Presentation By: Heather P. Jackson
Water Quality Specialist

Action Needed: Discussion and determination if any action is appropriate at this time.

- ☒ Jackson reported finding similar results to past years with low levels of pesticide residues being detected on the drift card or water sample or both at five out of nine sampling sites. She also explained how she had obtained the assistance of Dr. Sherrie Sprangers at the University of Maine at Machias (UMM), one UMM student and two volunteers from the Pleasant and Narraguagus Watershed Councils to collect samples. In addition, she worked closely with University of Maine at Orono masters degree candidate Lucner Charlestra who was experimenting with passive samplers called POCIS. Jackson explained these devices could be placed in the water and absorb pesticides over a period of time. Charlestra quantified phosmet using values from a different pesticide active ingredient with a similar chemical structure. Future work planned by Charlestra includes calculating values specific to phosmet for more accurate quantification. Jackson then compared all the Board's results for four of the past six years and noted residues had been detected 22 times when the wind was generally blowing from a treated field in the direction of the sampling site on a water body. There were another 18 times when wind direction was favorable for possible drift but residues were not detected. In many of these cases, the samples were taken late because no one was available to get to the site in a timely manner.

Eckert recognized Nat Lindquist, Vice President of Operations for Jasper Wyman & Son who explained how they had been contacted by lawyers from four environmental groups last November who alleged their aerial spraying was in violation of the Clean Water Act based on the Board's monitoring data. He noted that Wyman's had decided it would be too expensive to defend against the pending lawsuit and had instead purchased two large boom sprayers. He advised that the Company would be posting its land and would like the Board's staff to seek permission to enter and collect samples. He indicated the Company would decide on granting permission based on what was happening at the time of the request. However, he hoped the Board would suspend monitoring for this season so there would not be any new results to support a lawsuit against ground applications.

NOTE: The Board's staff has always sought permission and cooperation from both Wymans and Cherryfield Foods personnel for the monitoring activities including last summer's use of local sample collectors and POCIS.

Darin Hammond of Jasper Wyman & Son expressed concern that one of the volunteer members collecting samples belonged to one of the four environmental groups that had served notice of their intent to sue the company. He recommended that the Board not include the results from volunteers in the report. He also questioned how the groups managed to obtain the 2004 results before they were published. Randlett advised that any documents such as laboratory reports in the Board's possession are public information.

Robert Hammond explained that one half of the Maine wild blueberry crop is produced by independent growers and that much of their land is not conducive to ground spraying. He indicated they will have to hire an aerial applicator to treat their fields and asked the Board to suspend monitoring until the conflict between FIFRA and the CWA is settled. He also displayed a No Trespassing sign that the independent growers will be posting on their lands.

Humphreys stated the growers had a valid concern that one of the volunteers had a conflict of interest and Bradstreet agreed recommending that this be noted in the report. Batteese asked if the members would be more comfortable if the staff did not monitor the upcoming fungicide applications and report back on legal issues at the next meeting. Eckert polled the members and there was consensus not to conduct any fungicide sampling until after these issues were discussed again at the next meeting.

NOTE: Upon returning to the office, the staff checked on the number of samples collected by the volunteer with the alleged conflict of interest. The records showed she only collected one sample, it was collected on Cherryfield Foods property, it was a late collection three days after the application and it was negative for pesticide residues. The staff was aware she was a member of CROPS that promoted integrated crop management but did not know that she was listed as one of five contact persons on Environment Maine's Press Release of April 6, 2005.

In addition, the staff's telephone log shows that representatives of Wymans, Cherryfield Foods and the environmental groups were all provided the 2004 laboratory results on October 28, 2004.

6. Consideration of Staff Negotiated Consent Agreement with Mainely Grass of York

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involves the for-hire application of an herbicide to turf areas around a residence at 15 Frazier Pasture Road in Ogunquit when the intended client lived at 15 Frazier Pasture Road Extension. This action constituted a violation of the Board's statutes prohibiting the application of pesticides in a careless, negligent or faulty manner.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings informed the members this was the company's second incident of mistaken location but he believed there were extenuating circumstances in both cases. He noted the company had developed a written plan that will put the burden on the employee for any future cases of application at the wrong address.

Berry/Jemison: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

7. Other Old or New Business

a. Legislative Update – R. Batteese

- ☒ Batteese called the members attention to the Legislative Update sheet in their packets summarizing the public hearings for LD 1157, LD 1227 and LD 1256. He indicated he would attend the workshop sessions and keep them updated

b. Response to Senator Woodcock regarding GMO Products – R. Batteese

- ☒ Batteese stated he had been asked to respond on behalf of both the Board and the Department. Humphreys disagreed with some of the Department's conclusions especially in regard to coexistence. Jemison remarked that reports he had been reviewing showed that weeds were developing resistance faster than insects and that the price of GMO seed was still quite high. Bradstreet commented that as available land gets tighter the GMO plants may play a larger role in Maine agriculture.

c. Official Launch of YardScaping Campaign – K. Bourdeau

- ☒ Jennings reported the YardScaping program was over a year in development and

called the members attention to the extensive list of coalition partners at the end of the press release. He noted the release had been distributed to 150 news agencies and that Kelly was still in Augusta trying to put the final touches on the web site.

d. Resignations of Kelly Bourdeau and Steve Curtis – R. Batteese

- ☒ Batteese announced that Bourdeau had resigned to accept a position in Portland where she could walk to work from her home and would be receiving higher pay and more vacation time. He also reported that Steve Curtis had decided to retire to spend the summers traveling the country and the winters living in a new home in Arizona.

e. Other ????

- ☒ Batteese reported he had reserved the Carriage House at Maple Hill Farm for the annual planning session on Friday, June 3rd and wanted to be sure that date was still acceptable before he ordered the lunch and break refreshments. All the members present agreed the date was still okay on their schedules.
- ☒ Batteese called the member's attention to the article from the Portland Phoenix in today's packet stating that the environmental groups might try to perform their own monitoring of blueberry pesticide applications.
- ☒ Eckert asked about progress on a new proposed Chapter 26 regulation and Batteese assured her it had not been forgotten but other events had prevented the staff from being able to devote the time needed to complete a new draft.

8. Schedule and Location of Future Meetings

a. The Board tentatively scheduled the next meeting for Friday, May 20, 2005.

- ☒ The Board scheduled the next meeting for Friday, May 20, 2005.

b. Location and dates for the following meetings.

- ☒ The Board tentatively scheduled the following meetings for June 17th and July 29th with the intent to skip an August meeting.

9. Adjourn

- ☒ A motion to adjourn was accepted at 12:30 P.M.

Robert I. Batteese, Jr.
Director